DECISION

THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

51065

FILE: B-182014

DATE: SEP 29 1975

97401

MATTER OF: Philip Reisine - Claim for lump-sum payment of annual leave forfeited due to alleged administrative error.

DIGEST:

1. Former employee claims lump-sum payment for annual leave allegedly accrued on December 15, 1947, upon separation from Post Office Department (POD) to enter military service. Employee alleges his former employer, until his retirement from Internal Revenue Service, erroneously failed to recredit leave and it should be paid under P. L. 93-181, approved December 14, 1973. There is no entitlement since employee's claim accrued at time he was dropped from POD rolls in 1947 for failure to apply for restoration to his position, not administrative error, claim was not presented within 10 full years, and, therefore, it is barred by 31 U.S.C. §71(a).

2. Former Internal Revenue Service (IRS) employee claims lump-sum payment for leave to his credit when he was dropped from Post Office Department rolls in 1947 when he reenlisted in Army instead of applying for restoration. Employee believes claim is payable since he did not know of entitlement until 1973 and he had continuous Government service. There is no entitlement since employee's cause of action accrued in 1947 after all events occurred to fix Government's liability to claimant, and employee's lack of knowledge does not affect running of barring act; also, since employee's Army service is not considered civilian service, there was no continuous service and leave could not be transferred to IRS upon employment upon separation from Army.

This action is a reconsideration of our decision B-182014, January 30, 1975, in which we sustained the disallowance of the claim of Mr. Philip Reisine for recredit of sick and annual leave allegedly due to him as a result of his employment with the Post Office Department (POD) during the periods November 24 to December 31, 1937, and July 10, 1939, to June 1, 1942. Such action was requested by Mr. Reisine's attorney.

Mr. Reisine's claim was predicated upon section 5 of Public Law 93-181, approved December 14, 1973, which provides authority to make payment to former Federal employees who had forfeited annual leave because of an administrative error which was not discovered until after separation. We stated, however, in our earlier decision that the statute would not afford Mr. Reisine a basis for relief for the reasons stated below.

The facts were stated in our decision of January 30, 1975, and will be repeated here only to the extent that they bear upon the request for reconsideration. The record shows that Mr. Reisine served with the POD during the periods stated above. He was granted an indefinite leave of absence from the POD effective June 1, 1942, when he was called to military service with the United States Army. After his discharge from military service on June 9, 1947, Mr. Reisine reenlisted in the Army on June 12, 1947, and was dropped from the POD rolls effective December 15, 1947. On May 31, 1962, Mr. Reisine terminated his service with the Army. He began employment with the Internal Revenue Service (IRS) on June 4, 1962. In connection with his application for disability retirement in 1973, Mr. Reisine requested that his unused leave with the POD be credited to his leave account. The Postal Service and the Federal Records Center in St. Louis, Missouri, reported that Mr. Reisine's leave records concerning his employment with the POD were destroyed in accordance with applicable regulations. The IRS advised Mr. Reisine that there was no basis to recredit any sick leave since he had a break in service and that his appointment with the IRS was a new appointment which had no relation to his prior Federal service with the POD. With regard to annual leave the IRS advised Mr. Reisine there was no basis for recredit since under law whatever leave that Mr. Reisine earned with the POD should have been used or, if not used, paid for in a lump-sum upon his separation from the POD. Subsequently Mr. Reisine's claim was disallowed by our Transportation and Claims Division.

Federal Personnel Manual Letter (FPM) No. 630-22, January 11, 1974, and attachment thereto, issued by the Civil Service Commission, implements the cited statute and provides that the determination of whether an administrative error has occurred justifying compensation for leave lost through such error is primarily within the discretion of the agency involved. Since IRS determined that there was no basis for recrediting the leave, we sustained the disallowance of the claim. We also held that under the provisions of 31 U.S.C. § 71a (1970) we are precluded from considering any claim or demand against the United States unless

it was received here within 10 full years after the date it first accrued. We considered the fact that the barring statute permits an extension of 5 years when the claimant was a person serving in the military or naval forces during a time of war. For the purposes of the barring statute, peace was established July 25, 1947, as provided by Joint Resolution of July 25, 1947, 61 Stat. 451. Since Mr. Reisine was dropped from the POD rolls on December 15, 1947, we held his claim was barred.

Mr. Reisine's attorney now suggests that the statute of limitations does not start to run until such time as the claimant has knowledge or has means of knowing that the statute exists. He alleges that the first knowledge of the statute took place at the time of the Internal Revenue Service's computation of Mr. Reisine's disability retirement benefits in 1973 and that only then does the statute begin to run. Mr. Reisine's attorney also believes that Mr. Reisine's service was continuous since he served in the Army between his periods of civilian employment.

It has been held that a cause of action accrues on the date when all events have occurred which fix the liability, if any, of the United States to a claimant. See Levine v. United States, 133 Ct. Cl. 774 (1956); Sese v. United States, 125 Ct. Cl. 526 (1953); Reliance Motors Inc. v. United States, 112 Ct. Cl. 324 (1948). The statute of limitations in 31 U.S.C. § 71a is applicable to a claim presented to our Office more than 10 years after it accrued and such claim is barred from consideration although the claimant may not have been aware of the time limitation. B-167100, June 18, 1969. The Lump Sum Leave Act of December 21, 1944, 58 Stat. 845, 5 U.S.C. § 61b (1946), requires payment of annual leave to be made to a civilian officer or employee on the effective date of termination of his services with the Government. Inasmuch as Mr. Reisine's date of separation from the POD was December 15, 1947, his entitlement to a lump-sum payment accrued on that date. Since his claim was not received in our Office within 10 full years of that date, it is barred.

In support of his contention that there was no break in service from the time Mr. Reisine left the POD to serve in the Army and then the IRS, Mr. Reisine's attorney alleges that Mr. Reisine merely transferred from one agency to another and, therefore, maintained continuous employment with the Government. Such continuous employment with the Government, Mr. Reisine's attorney maintains, according to 5 U.S.C. § 5551(f), entitles the employee to correspondingly transfer all his rights to each agency of Government.

Section 8(b) of the Selective Training and Service Act of 1940, as amended, 50 App. U.S.C. § 308(b) (1946), provides in pertinent part as follows:

> "(b) In the case of any such person who, in order to perform such training and service, has left or leaves a position, other than a temporary position, in the employ of any employer and who * * * (3) makes application for reemployment within ninety days after he is relieved from such training and service * * *
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> > "(A) if such position was in the employ of the United States Government * * * such person shall be restored to such position or to a position of like seniority, status, and pay;"

It is clear from the statutory language stated above that the performance of military service is not civilian service and that an employee who left his position to perform military service during 1942 was not entitled to restoration to a civilian position following such service unless he applied for restoration within a period of 90 days following his release from military service. Mr. Reisine's attorney states that 5 U.S.C. § 5595(d) (1970), which was inadvertently cited as 5 U.S.C. § 5551(f), supports his allegation that Mr. Reisine served continuously. In this connection we point out that the cited statute does not indicate that military service constitutes civilian service. It merely provides that an employee separated through no fault of his own and otherwise entitled to severance pay is not entitled to such pay during a period of subsequent reemployment.

The record indicates that Mr. Reisine was granted an indefinite leave of absence from the POD to serve in the military on June 1, 1942. He was discharged on June 9, 1947, but reenlisted on June 12, 1947, and continued to serve in the Army until May 31, 1962. Since he failed to apply for reinstatement to his position at the Post Office Department within 90 days from the time he was discharged June 9, 1947, he was dropped from the rolls of the POD on December 15, 1947. That date marked his official separation from his civilian position since military service is not considered to be continued civilian service with a Government agency. Therefore, when Mr. Reisine began working for the IRS on June 4, 1962, he entered the agency as a new employee, and any sick or annual leave which may have been left to his credit at the time of his separation from the POD was no longer recreditable.

Accordingly, our decision of January 30, 1975, sustaining the disallowance of Mr. Reisine's claim is affirmed.

R.F.KELLER

Deputy Comptroller General
of the United States